

## **REMARKS**

This amendment is responsive to the office action of December 17, 2004. Claims 1-8 are pending in the application.

### Drawings objection

The drawings were objected to due to the absence of brackets on exploded views as per Rule 1.8 (h)(1).

These drawing objections are noted and are corrected with new drawings submitted herewith, having Figures 1A, 1D, 2A, 3A and 3C bracketed. These corrected drawing sheets are now in compliance with 37 C.F.R. 1.121 (d).

### Rejections Under 35 U.S.C. § 112

Claims 1-8 were rejected under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph, as being indefinite for failing to particularly point out and distinctively claim the subject matter which applicant regards as the invention.

Examiner indicates Claim 1, last line, is indefinite for the clause "each suction cup" since there is no antecedent for a plurality of cups. This claim has been amended by substituting "said" for "each" preceding "suction cup member" and hence now satisfies there being an antecedent for it in the claim.

In Claim 3, line 1, the Examiner indicates there is no antecedent for "the means for attaching". However, Claim 3 is dependent upon Claim 2, which is dependent upon Claim 1, the last line of which states "a means for connecting each suction cup member to said receptacle unit." Claim 3 has now been amended substituting "connecting" for "attaching" thus meeting the antecedent noted by the Examiner.

Claims 1-8 were also considered indefinite by the Examiner "since it was not clear if applicant intends to claim a subcombination of a mounting apparatus for grasping a vertical pole post, or the combination of a mounting apparatus and a vertical pole post. The former is recited in claim 1 but claims 2,3,4 and 8 recite the latter".

Applicant intends all claims to be subcombination claims, whereas the pole is not a positive element of the invention. Claims 2,3,4 and 8 have been amended to clarify this as per Examiner's suggestion. In claim 2, "pole type member" has been deleted and in claim 3 "comprised of a vertical pole member" has been deleted. Claim 4 has been amended to more clearly locate its compression fitting at the "top" end of its "receptacle unit" with wording describing the vertical pole being in combination with the mounting apparatus deleted. Claim 8 has also been amended to clarify a vertical pole member not being in combination with the mounting apparatus. None of these amendments involves introduction of new matter.

In view of all of the above noted amendments, it is requested that they be entered and as such do not introduce new matter in the specification nor are they in conflict with the statutes

Rejections Under 35 U.S.C. § 102

Claims 1 and 2 were rejected under 35 U.S.C. 102 (b) as being anticipated by Watson U.S. 3,020,017. The Examiner expressed the opinion that Watson disclosed a mounting apparatus for receiving a pole (10) comprising a suction cup (17) with a handle (24), a receptacle (11) receiving the pole, and connecting means (14), connecting the suction cup to the receptacle. Watson's "Figure 4 discloses the suction cup adapted to be axially positioned with respect to the suction cup."

While the Watson patent does contain elements noted by the Examiner in one form or another, it distinctly and only relates to placement devices useful for medical purposes such as surgical, orthopedic, dental and x-ray photography. Also, every embodiment contains a U-shaped structure ( unlike applicant's device) with a suction device at both of its ends (also, unlike applicant's device) - usually one mounted on a table and another at the opposite end supporting a patient's body part or holding a cassette. Nowhere is there any mention of a use for producing shade or sports or other recreation oriented activity.

The "pole (10)" in Watson is actually a rather short "rod" connected between two elbows (11) fixedly secured by small set screws forming the U-configuration. These elbows turn substantially at right angles to the short length of the rod and each of their open ends receive the ends of another rod or post integral with a vacuum cup

element. Such a configuration can not be confused with applicant's invention in which a vertical pole 6 to 8 feet long is secured with a compression fitting and/or a locking pin, the top of which can contain an umbrella with an 8 to 10 foot diameter when opened.

Applicant's claimed invention only utilizes suction devices at the base or lower end and in several of its embodiments can grasp a pole at multiple locations along its length, thereby making it height adjustable, unlike Watson. The purpose and use of applicant's invention involves a new and practical use of a combination of old elements. That is it provides shade, sports, banner and recreational equipment for swimming pool (mounted under or above water) and other locations.

The fact that Watson's "Figure 4 discloses the suction cup adapted to be axially positioned with respect to the suction cup" teaches away from applicant's invention wherein suction devices are only at the base and not at both ends of a U-structure.

It is requested the rejection under 35 U.S.C. § 102 be withdrawn. The present claims define a structure entirely different from the table mounted device of Watson. Further there is no teaching in Watson as to the use for which applicant's invention is intended.

#### Rejections Under 35 U.S.C. § 103

Claim 3 was rejected under 35 U.S.C. § 103 (a) as being unpatentable over Watson in view of Carruthers U.S. 5,915,482.

The Examiner states "The attaching means recited in the claim is well known in the art (bayonet type) as shown by Carruthers (at 18 and 24). It would have been obvious to one skilled in the art at the time the invention was made to have provided the device shown by Watson with an attaching means as the one shown by Carruthers to facilitate the securing of the cup within the receptacle."

A detailed, comparison of the Carruthers attaching means with applicant's shows very little similarity. In Carruthers a wooden handle is made interchangeable with gardening hand tools in a quite complex arrangement. It "comprises a handle portion having a generally cylindrical configuration. The handle portion has a tapered lower end. The handle portion has a dowel extending therethrough upwardly of the tapered lower end thereof. The dowel has diametrically opposed end portions extending outwardly of the handle portion. A shank portion couples with the handle portion. The shank portion has a recess extending within an upper end thereof. The recess is dimensioned for receiving the tapered lower end of the handle portion therein. The upper end has a pair of diametrically opposed vertical slots extending downwardly thereof in communication with the recess. Lower ends of the vertical slots have horizontally disposed slots in communication therewith. Ends of the horizontally disposed slots have arcuate flaps disposed thereover. The vertical slots slidably receive the opposed end portions of the dowel of the handle portion whereby when the opposed end portions reach the lower ends of the vertical slots, the handle portion is rotated for sliding the opposed end portions into the horizontally disposed slots. A collar member is slidably disposed on the hand portion. The collar member has an externally threaded open upper end and an outwardly flared open lower end.

The open lower end has a pair of diametrically opposed recesses extending upwardly thereof. The recesses receive the opposed outer ends of the dowel therein when in a fully engaged orientation. A locking ring is slidably disposed on the handle portion. The locking ring is internally threaded for engaging the externally threaded open upper end of the collar member in the fully engaged orientation.”

Applicant's Claim 3 simply describes a tooth member on the suction cup member and an internal ell shaped groove in said receptacle unit whereby the tooth member passes through the ell shaped groove. For two mating PVC or other plastic members, such a simple combination results in an easy to achieve tight, snug and yet removable fit. Note the lack of wooden materials, dowels extending all the way through its handle, tapered lower ends, shank members, a dimensional recess for receiving tapered lower handle end portion, diametrically opposed vertical slots, horizontal slots having arcuate flaps disposed thereover, a collar member slidably disposed on the handle having an externally threaded open upper end and an outwardly flared open lower end, a locking ring slidably disposed on the handle internally threaded for engaging the externally threaded open upper end of the collar member.

Applicant's and Carruthers' inventions are completely different, involving fields as diverse as providing shade over swimming pools versus providing a removable handle for gardening. Their structure, operation and functionality are also inconsistent with each other. A person having ordinary skill in the art in the combination of these references would have to be skilled in medicine, woodworking,

gardening, shade and sports provision and plastics facilitation and still would fall far short of applicant's invention.

It is requested the rejection under 35 U.S.C.103 (a) be withdrawn. Claim 3 presently defines an apparatus nothing like any combination of Watson in view of Carruthers.

Claims 4 and 5 were rejected under 35 U.S.C. 103 (a) as being unpatentable over Watson in view of Carruthers and Chen (2002/0158033A1).

Chen is said to disclose a fitting (71) for connecting two members together. Examiner states "It would have been obvious to one skilled in the art at the time the invention was made to have provided the post (10) of Watson with a fitting means as shown by Chen to connect a second member to the post to increase the height of the device."

A bathroom hanger in combination with multiple suction disk assemblies is disclosed in Chen. A telescopic tube is clamped between the suction disk assemblies with multiple shelves mounted on the telescopic tube, multiple arms extend from the telescopic tube and a showerhead holder is mounted on the telescopic tube. The suction disk assemblies are activated by screwing a knob onto the suction disk which teaches away from applicant's lever handle activated method.

Fitting (71) in Chen is described as a "positioning device" having an eccentric ring for supporting a showerhead holder. The (71) device "is the same as the first positioning device (51)" which extends from the corner of a shelf and has an eccentric ring rotatably mounted on it. A telescopic tube is extended through the "positioning device" (51) and the eccentric ring. But, "a retaining sucking cup (501)"

in necessary to be mounted on the side wall of the aforementioned shelf to retain the shelf from rotating.

Unlike in Chen, applicant's claimed compression fitting on the receptacle unit is all that is needed to tighten and hold a vertical pole such as may contain an umbrella at its top and keep it from rotating. No "retaining sucking cup" is desirable or necessary. The compression fitting of applicant utilizes a compression fitting cap, a compression fitting washer and a compression fitting nipple rather than the eccentric ring device taught in Chen which is admitted to be ineffective in eliminating rotational motion.

Thus it could not have been obvious even to one skilled in the arts of medicine, carpentry, gardening, shade and sports devices, plastics fabrication and bathroom hangers to have provided the post of Watson with Chen's fitting means to connect a second member to the post to increase the device's height. Note in the prior 35 U.S.C. 102 (b) rejection item (10) of Watson was compared to applicant's vertical pole member, yet here it is confusingly mentioned as having a second member fitted to it to increase the height of the device. The configurations and sizes of Watson's and Chen's elements bear no relation to each other and could not be mated. Thus, reconsideration of Claims 4 and 5 as amended is requested and the rejections under 35 U.S.C. 103 (a) should be withdrawn.

Claim 8 was rejected under 35 U.S.C. 103 (a) as being unpatentable over Watson in View of Carruthers, Chen and Valentz et al. U.S. 6,663,070.

Examiner states that Valentz et al. shows the use of a pin (216) extending through a hole on a post for securing the pole therein and that it would have been



obvious to one skilled in the art at the time the invention was made to have made the screw (13) shown by Watson as a pin extending through a hole on the post (10) to have a stronger securing means.

Valentz et al. "relates to systems for supporting and hanging pipes and other loads on rooftops" and introduces yet another entirely foreign art in the long string of art references cited under this 35 U.S.C. 103 (a) rejection. In addition it should be noted the "pin (216)" noted by the Examiner is not a pin at all, but rather a threaded bolt screwed into the "nut (214) for clamping L-bracket 200 to post 102 of the support base." Applicant's locking pin which contains a steel ring at one end facilitates easy and quick insertion and removal. Thus it differs in physical design, method and purpose of use with the threaded bolt (216) and engaged nut (214) of Valentz et al. Hence, there is no way it could influence anyone skilled in the art to make the screw (13) of Watson, which is only a small set screw touching rod (10) at only one outside point, be a locking pin as specified by applicant.

Thus, reconsideration of Claim 8 as amended is requested and rejections under 35 U.S.C. 103 (a) should be withdrawn.

The Examiner mentions the prior art of Davis U.S. 3,851,601, Dittrich et al. U.S. 6,126,359 and Richter U.S. 6,749,160 as not relied upon but considered pertinent to applicant's disclosure. Neither of the first two involve the use of any suction disks and the third relates to a suction disk mounting arrangement for supporting articles on smooth surfaces, including a housing with an interior space delimited by a plate-like suction cup.

It is believed none of these three references taken individually, in combination with themselves, or in combination with any of the other references cited in the Office action describe applicant's invention.

Examiner stated "Claims 6 and 7 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims". Applicant believes amended claims 1,2,3,4, and 8 have overcome the 35 U.S.C. 112, 2<sup>nd</sup> paragraph rejection and all of the references cited have been overcome. Thus, reconsideration is requested and all rejections should be withdrawn and pending claims 1-8 should be allowed.

It should also be of interest that the applicant has recently commenced commercial exploitation of this invention. Sales have successfully been transacted in states ranging from Florida to California with the novelty and usefulness of the product being a major factor, even in the well established swimming pool and spa industry.

#### Conclusion

For all of the above reasons, applicant submits that the specification and claims are now in proper form, and that the claims all define patentably over the prior art. Therefore, it is submitted that this application is now in condition for allowance, which action is respectfully solicited.

Conditional Request for Constructive Assistance

Applicant has amended the claims for this application so that they are proper, definite, and define novel structure which is also unobvious. If, for any reason this application is not believed to be in full condition for allowance, applicant respectfully requests the constructive assistance and suggestions of the Examiner pursuant to M.P.E.P. § 2173.02 and § 707.07 (j) in order that the undersigned can place this application in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted,



Bernard M. Weiss  
Patent Agent

568 N. Acoma Boulevard  
Lake Havasu City, AZ 86403-4838  
Tel. (928) 680-0654

27,169  
Registration Number

Appl. No.10/688,696  
Amendment Dated 3/14/2005  
Reply to Office Action of 12/17/2004

## **REPLACEMENT DRAWINGS**

Replacement drawing sheet numbers 1/5, 2/5 and 3/5 are herewith provided to correct the absence of brackets on the exploded views of Figures 1A, 1D, 2A, 3A and 3C.